IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1206 of 1985

For Approval and Signature:

HON'BLE MR.JUSTICE M.S.SHAH Sd/-
and
HON'BLE MR.JUSTICE D.H.WAGHELA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

1 & 2 YES; 3 to 5 NO

SAUKEM EDUCATION SOCIETY

Versus

STATE OF GUJARAT

Appearance:

1. First Appeal No. 1206 of 1985

NANAVATI ASSOCIATES for Appellant

MR AY KOGJE AGP for Respondent No. 1-4

CORAM : HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE D.H.WAGHELA

Date of decision: 17/12/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE M.S.SHAH)

This appeal under Section 96 of the Code of Civil Procedure is directed against the judgment and decree dated 18.2.1984 passed by the learned Civil Judge (S.D.), Porbandar dismissing Civil Suit No.58 of 1980 filed by the appellant-Saukem Education Society which is running Birla Sagar Higher Secondary School at Porbandar.

2. The appellant established Birla Sagar Higher Secondary School (hereinafter referred to as "the school") at Porbandar from June, 1970 after obtaining permission from the Director of Education by order dated 29.5.1970. The permission was granted subject to as many as 16 conditions and Condition No.16 was as under:

"16. The permission is granted subject to the condition that instructions shall be imparted as per the syllabus of the Gujarat State and subject to compliance with the departmental regulations and subject to further condition that grant will not be paid if adequate number of students is not enrolled."

On fulfilling the above conditions, permission was granted to start class in Std.VIII (English medium). The appellant thereafter applied to the Central Board for affiliation of the same school and the said application was sent through the District Education Officer (DEO), Junagadh. In his letter dated 1.9.1970, the DEO informed the Director of Education that the school was established in June, 1970 and the Director of Education has, by order dated 29.5.1970, granted permission to start one class in Std.VIII subject to the condition that instructions shall be imparted as per the Central Government's syllabus. The DEO's letter further stated that the appellant's school had, therefore, applied for recognition of the Central Board for imparting instructions as per the syllabus and norms of the Central Government. Accordingly, the Director of Education forwarded the papers to the appropriate authority of the Central Board of Secondary Education in New Delhi and informed the appellant's school accordingly by letter dated 7.1.1971. The appellant accepted the grant from the State Government in the years 1970-71 to 1976-77.

3. When the Audit Department of the Directorate of Education raised objections against payment of grant to the appellant on the ground of non-compliance with Condition No.16 stipulated in the order dated 29.5.1970 of the Director of Education, the DEO cancelled the grant

and passed orders to recover the amount of grant obtained by the appellant in breach of the conditions of the order dated 29.5.1970. The appellant thereupon filed the above-numbered suit after entering into correspondence with the authorities of the Education Department. The trial Court accepted the stand of the Director of Education of the State Government that the appellant had committed breach of the conditions of the order sanctioning grant and, therefore, the suit came to be dismissed. The appellant-plaintiff thereupon moved this Court. When the appeal was admitted, interim stay was also granted against any recovery. The reason therefor is that the appellant having obtained the grant from the State Government in violation of the express condition of the grant has not refunded the amounts of grant received between 1970-71 to 1976-77 for the last almost 30 years.

4. At the hearing of this appeal, however, Mr.Dhaval Amin, learned counsel for the appellant, has submitted that, when the Director of Education was informed that the appellant was imparting instructions as per the Central syllabus, the Director was estopped from raising any objection about non-compliance with Condition No.16 for imparting instructions as per the syllabus of the State Government. Secondly the learned counsel submitted that the grant was received by the appellant in the distant past and the appellant will not now be able to recover the amounts from the students who had studied in the appellant's school about 28 to 30 years back.

5. Mr.Kogje, learned A.G.P. for the respondent authorities has opposed the appeal and supported the judgment of the trial Court.

6. As far as the first contention about estoppel is concerned, the contention proceeds on the assumption that the appellant had disclosed all the relevant facts at the relevant time and still the Director of Education did not raise any objection. When the Director of Education granted permission to open school and sanctioned grant by order dated 29.5.1970, Condition No.16 was specific that the appellant had to impart instructions as per the syllabus of the State Government. Notwithstanding such express condition, the appellant started secondary school from June 1970 and started imparting instructions as per the syllabus of Central Government. Even while applying for recognition of the Central Board through the DEO, who forwarded the appellant's application to the Director of Education for further forwarding the same to the Central Board, it appears that the Director of Primary Education was led to believe that the Director had earlier granted

permission on 29.5.1970 to the appellant on condition that the appellant will impart instructions as per the syllabus of the Central Government. It is, therefore, not correct to state that the Director was apprised of the breach of Condition No.16 at the relevant time. On the contrary, but for such misrepresentation, the Director would and could have immediately taken appropriate action, at least to stop payment of grant in breach of Condition No.16. We are, therefore, unable to accept the contention urged on behalf of the appellant on the ground of estoppel.

7. As regards the contention that the school would have recovered higher fees from the students if such grant was not received from the State Government and that the school management would not be able to recover it from any one, ordinarily, this submission could have made some impact if the school was solely dependent on the fees from the students. It transpires from the record and the learned counsel for the appellant also concedes that the Birla Sagar Higher Secondary School was established at Porbandar essentially to provide educational facilities to officers of Saurashtra Chemicals at Porbandar. It would, therefore, appear that if the appellant had not received any grant from the Government, the amounts would have been made good by the aforesaid Company itself. It cannot, therefore, be said that recovery of the grant illegally obtained by the appellant should not be ordered on the ground of inability of the institution to recover the amounts from the students who had then studied at the appellant's school. We do not find any justification either in law or in equity to interfere with the judgment and decree passed by the trial Court.

8. In view of the above discussion, we do not find any merit in any of the contentions raised on behalf of the appellant. No other contention was urged. The appeal is accordingly dismissed. In the facts and circumstances of the case, we do not pass any order as to costs.

Sd/-

(M.S. Shah, J.)

Sd/-

(D.H.Waghela,J.)

(KMG Thilake)